

2. Noncompliant sidewalk, bicycle, and shared use paths. Noncompliant sidewalk, bicycle and shared use paths that fail to meet requirements of the department's standards for construction, alignment, or placement within the dedicated right of the street shall be deemed to be noncompliant and not qualify for maintenance. However, such facilities may co-exist within the dedicated right-of-way of the street under a land use permit issued by the resident engineer to the local governing body responsible for having established the facility through its subdivision process.

Such permits will clearly specify the responsibility for maintenance of the facility and related activities to the extent the facility occupies the street's right-of-way. The permit applicant should be a county, incorporated town, or other entity that has perpetual maintenance capability. Noncompliant sidewalks and shared use paths may be constructed of bituminous concrete, hydraulic concrete, gravel, or other stabilizer convenient to the applicant.

- J. Bridge, drainage, and other grade separation structures. Bridges, drainage, and other grade separation structures shall be designed and constructed in accordance with all applicable department criteria and standards. The resident engineer may require special review of the plans and construction inspection. The department will accept grade separation structures as part of new subdivision streets provided the structure is a drainage structure or is intended to separate the movement of registered motor vehicles. In addition, the department will accept grade separation structures intended to separate pedestrians or bicyclists or any combination thereof from traffic using the roadway, provided:

1. The structure is available for unrestricted public use;
2. The structure is accessible to pedestrian facilities, if any, situated along the street; and
3. The projected traffic volume of the street is not less than 4000 vpd or, if the structure otherwise serves as part of the principle pedestrian access to a school and a peak hour traffic volume of 450 vph is projected.

In all other instances, the grade separation structure shall be deemed to be a county controlled grade separation structure within the right-of-way of the street, in which case the street will only be accepted as part of the secondary system of state highways maintained by the department after the local governing body and the department have executed an agreement acceptable to the department that (i) acknowledges the department has no responsibility or liability due to the presence of the structure and (ii) assures the costs of inspection, maintenance, and future improvements to the structure are provided from sources other than those administered by the department.

In all cases, whether the structure is accepted as an integral part of the roadway for maintenance by the department or it remains a county controlled structure, the responsibility for lighting, safety, and security of those using such facilities shall remain a responsibility of local government.

- K. Dams. The department will only consider accepting subdivision streets for maintenance that occupy dams when all of the following provisions are satisfied. For the purpose of this section, a roadway will be considered to occupy a dam if any part of the fill for the roadway and the fill for the dam overlap or if the area between the two embankments is filled in so that the downstream face of the dam is obscured or if a closed drainage facility from a dam extends under a roadway fill.